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No. 85-993

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

PAULA A. HOBBIE,
Appellant,

vs.

UNEMPLOYMENT APPEALS COMMISSION, et al.,
Appellees.

ON APPEAL FROM THE DISTRICT COURT
OF APPEAL OF THE STATE OF FLORIDA,
FIFTH DISTRICT

BRIEF OF THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, THE AMERICAN JEWISH COMMITTEE, AND THE CHRISTIAN LEGAL SOCIETY AS AMICI CURIAE IN SUPPORT OF APPELLANT

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QUESTIONS PRESENTED

1. Is the denial of unemployment compensation benefits to Appellant, a Seventh-day Adventist who was discharged for refusing to work on the Sabbath, a violation of the free exercise clause of the First Amendment?

2. Would an award of unemployment compensation benefits to Appellant violate the establishment clause of the First Amendment?

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Pursuant to Rule 36.2 of the Rules of this Court, the organizations named above file this brief in support of Appellant. Consent for the filing of this brief has

been obtained in writing from the attorneys of record for the parties in this case. Their original letters have been filed with the Clerk of this Court.

INTEREST OF THE AMICI CURIAE

The Baptist Joint Committee on Public Affairs consists of representatives elected by each of eight cooperating Baptist conventions in the United States: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention. These Baptist groups have nearly 30 million members and reflect the traditional Baptist concern for proper church-state

relations. The Baptist Joint Committee has as one of its mandates the obligation to respond ". . . whenever Baptist principles are involved in, or are jeopardized through, governmental action. . . ." Among Baptists, religious liberty is a fundamental and sacred principle. We believe that the principle of religious liberty as it is embodied in the First Amendment to the Constitution of the United States is at risk in the case at bar.

The American Jewish Committee, a national organization of approximately 50,000 members, was founded in 1906 to protect the civil and religious rights of Jews. It is the conviction of this organization that the civil and religious rights of Jews will be secure only when the civil and religious rights of Americans of all faiths are equally secure. To fulfill this aspiration, we

strongly support the constitutional principle of separation of religion and government. The American Jewish Committee filed a brief amicus curiae in the case of Sherbert v. Verner, 374 U.S. 398 (1963), wherein the Court ruled that a denial of unemployment compensation benefits to a Sabbatarian was violative of the free exercise clause.

The Christian Legal Society is a non-profit professional association of 3,500 Christian judges, attorneys, law professors and law students, founded in 1961. The Center for Law and Religious Freedom is a division of the Christian Legal Society founded in 1975 to protect the free exercise of religion, supporting the appropriate accommodation by the state of religious beliefs and practices and the respect for religious rights as required by the First Amendment, thus strengthening the individual citizen's respect for,

and allegiance to, our constitutional government.

SUMMARY OF ARGUMENT

The denial of unemployment compensation benefits to Appellant, a Seventh-day Adventist who was discharged for refusing to work on the Sabbath, violates the free exercise clause of the First Amendment. The gravamen of Appellant's constitutional complaint is that she is forced to choose between following the dictates of her conscience and forfeiting benefits on the one hand or abandoning her religious convictions and maintaining her employment on the other. Governmental imposition of such a choice is violative of the free exercise clause as it was interpreted by this Court in Thomas v. Review Board, 450 U.S. 707 (1981), and Sherbert v. Verner, 374 U.S. 398 (1963).

The pressure to abandon a sincerely held religious belief is no less present in this case than in Sherbert or Thomas, notwithstanding the fact that Appellant's religious conversion occurred after her employment began. In all three instances, the claimants were either terminated or forced to resign because of conflicts between their sincere religious beliefs and the terms of their employment.

Permitting the state to deny unemployment compensation benefits to Appellant would severely restrict the protection guaranteed by the free exercise clause. Individuals would have the right "to adhere to religious beliefs, but not the right to adopt such beliefs in the first instance or convert from one faith to another." Key State Bank v. Adams, 360 N.W.2d 909 (Mich. App. 1984), at 913 (emphasis added).

Fundamental to religious liberty is the freedom to expand and develop the conscience. A decision in favor of the State of Florida would hamper this development by discouraging religious conversions among those who are already employed. In short, a claimant "should not be penalized because he did not embrace his beliefs 'at the proper time.'" Engraff v. Industrial Commission, 678 P.2d 564 (Colo. App. 1983), at 568. Accordingly, amici urge the Court to reject the "agent of change" theory advanced by Appellees.

The record in the case sub judice is totally devoid of any proof that a compelling state interest exists for denying Appellant unemployment compensation benefits. Assuming arguendo that such an interest was set forth in the record, there is no evidence that a denial of benefits to Appellant is the least re-

strictive means of accomplishing that interest. Therefore, the decision of the Unemployment Appeals Commission for the State of Florida should be reversed, and benefits awarded to this sincere Seventh-day Adventist.

ARGUMENT

I. The denial of unemployment compensation benefits to Appellant, a Seventh-day Adventist who was discharged for refusing to work on the Sabbath, violates the free exercise clause of the First Amendment.

The criteria for evaluating a free exercise claim have been clearly set forth in a number of this Court's decisions. To establish a prima facie case under the free exercise clause, a claimant must establish that the challenged state action imposes a substantial burden on her free exercise of religion. Wisconsin v. Yoder, 406 U.S. 205 (1972);

Sherbert v. Verner, 374 U.S. 398 (1963); Thomas v. Review Board, 450 U.S. 707 (1981). Unless the state then can demonstrate that the burden is justified by a compelling state interest which cannot be achieved by less restrictive means, the claimant's challenge will be sustained. Wisconsin v. Yoder, supra; Sherbert v. Verner, supra; Thomas v. Review Board, supra.

Only those exercises arising from a sincere religious belief are protected by the free exercise clause. Yoder, supra, at 216. The sincerity of Appellant's religious claim in the case sub judice is beyond question. Counsel for Respondent twice stated during the administrative hearing that "no one is doubting the sincerity of Ms. Hobbie's religious convictions." (R. 102; see also R. 70). Appellant is a devout Seventh-day Adventist, who because of her deeply held

religious beliefs is simply unable to work on Saturdays.

Equally clear is the fact that the denial of benefits in this case substantially burdens Appellant's free exercise of religion. The fact that the burden is imposed indirectly through the denial of government benefits is of no consequence. Sherbert, supra, at 404. ". . . to condition the availability of benefits upon [Appellant's] willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties." Sherbert, supra, at 406.

The gravamen of Appellant's constitutional complaint is that she is forced to choose between following the dictates of her conscience and forfeiting benefits on the one hand or abandoning her religious convictions and maintaining her employment on the other. "Governmental imposi-

tion of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship." Sherbert, supra, at 404.

The Court has emphatically stated:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his belief, a burden upon religion exists. Thomas, supra, at 717, 718. (emphasis added).

The pressure to abandon a sincerely held religious belief is no less present in this case than in Sherbert or Thomas, notwithstanding the fact that Appellant's religious conversion occurred after her employment began. In all three instances, the claimants were terminated or forced to resign because of conflicts between their sincere religious convic-

tions and the terms of their employment.

The critical factor in each of these decisions is that the conflict arose after the employment began. These cases are to be distinguished from the numerous state court decisions cited by Appellees wherein claimants knowingly and voluntarily accepted employment that would clash with their then-existing religious convictions. See Flynn v. Maine Employment Security Commission, 448 A.2d 905 (Me. 1982); DePriest v. Bible, 653 S.W.2d 721 (Tenn. App. 1980); Hildebrand v. Unemployment Insurance Appeals Board, 566 P.2d 1297 (Calif. 1977). Each of these state court decisions addresses a fact pattern in which the employee clearly assumed any burden on the free exercise of his religion. Accordingly, the courts quite properly held that the claimants were estopped from asserting a free exercise claim.

In contrast, Ms. Hobbie was not a Sabbatarian when she accepted employment with Lawton Jewelers. Indeed, she had no reason to believe that she would ever be unable to fulfill the terms of her employment. The absence of a pre-employment Sabbatarian belief is underscored by the fact that she worked on Saturdays for some 2 1/2 years (R. 36, 38). Thus, it cannot be said that Ms. Hobbie knowingly and voluntarily accepted employment that would conflict with her religious beliefs.

Very few courts have addressed a factual situation identical to that of Appellant Hobbie. Amici have been able to locate only two such cases, both of which were decided in favor of the employee.[1] Key State Bank v. Adams, 360

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[1] Martinez v. Industrial Commission of Colorado, 618 P.2d 738 (Colo. App. 1980) as cited by Appellees is arguably on point but has been rejected by the

N.W.2d 909 (Mich. App. 1984); Engraff v. Industrial Commission, 678 P.2d 564 (Colo. App. 1983).

Permitting the state to deny unemployment compensation benefits to Appellant would severely restrict the protection of the free exercise clause. Individuals would have the right "to adhere to religious beliefs, but not the right to adopt such beliefs in the first instance or convert from one faith to another." Key State Bank, supra, at 913 (emphasis added).

Fundamental to religious liberty is the freedom to expand and develop one's

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more recent decision of the Colorado Court of Appeals in Engraff v. Industrial Commission of the State of Colorado, above cited.

Appellees also cite Levold v. Employment Security Department, 604 P.2d 175 (Wash. App. 1979), in support of their position. However, Levold does not address a legitimate free exercise claim in that it involves a matter of mere personal preference rather than sincere religious belief.

conscience. A decision in favor of the State of Florida would hamper this development by discouraging religious conversions among those who are already employed when a conversion would create the potential for conflict with one's existing terms of employment. In short, a claimant "should not be penalized because he did not embrace his beliefs 'at the proper time.'" Engraff, supra, at 568. Accordingly, amici urge the Court to reject the "agent of change" theory[2] advanced by Appellees.

The right to change one's religious beliefs is so basic to human freedom that

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[2]Under the "agent of change" theory, Appellant would not be entitled to benefits because she, rather than her employer, changed the terms of her employment by converting to the Adventist faith. While Amici acknowledge the possible relevance of this fact as it relates to the issue of whether or not her discharge was justifiable, it should not be relevant as to whether or not Appellant is awarded unemployment compensation benefits.

it was included in the Universal Declaration of Human Rights announced by the United Nations in 1948. Incorporated into this landmark document is the right both to adopt new beliefs and to manifest those beliefs in one's public life:

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. Universal Declaration of Human Rights, Article 18 (1948).

The burden imposed upon Appellant's religious exercise can be justified only if it is necessary to achieving a compelling state interest. Even then, that interest must be achieved by the least restrictive means available. Thomas, supra, at 718. This Court has described the magnitude of interest required of the state as being "of the highest order," Thomas, supra, at 718, and involving

"some substantial threat to public safety, peace, and order." Sherbert, supra, at 403. "Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation." Sherbert, supra, at 406, quoting Thomas v. Collins, 323 U.S. 516, 530 (1945).

The record in the case sub judice is totally devoid of any proof that a compelling state interest exists for denying Appellant unemployment compensation benefits. There is nothing to indicate that a significant number of fraudulent claims will arise as a result of a decision favorable to Appellant. Assuming arguendo that such proof existed, the state would still be required to demonstrate that no alternate means of controlling such abuses were available before the burden imposed upon Appellant's free exercise of religion would be justified. Sherbert, supra, at 407. In

addition, there is nothing in the record to indicate that widespread unemployment will result from an award of benefits or that a substantial strain will be placed upon the Florida Bureau of Unemployment Compensation so as to jeopardize its existence.

The state's legitimate interest in granting benefits only to those who are involuntarily unemployed is no more compelling here than in Sherbert and Thomas v. Review Board. In no real sense can Appellant's unemployment be characterized as "voluntary." Like Adell Sherbert, Ms. Hobbie's inability to work on the Sabbath was a matter of religious necessity once she had determined to become a Seventh-day Adventist. Admittedly, Appellant voluntarily became a Sabbatarian as did Ms. Sherbert. However, Appellant's subsequent unemployment was not voluntary but was the result of being discharged by

an employer who was unwilling to accommodate her constitutionally protected religious practices. (R. 79, 80, 104).

The Court has never declared an unqualified constitutional right to unemployment compensation benefits for all persons whose unemployment arises from sincere religious convictions. According to the Court, this right might not exist where an employee's religious convictions "serve to make him a nonproductive member of society." Sherbert, supra, at 410. However, there is nothing in the opinions of the Court to indicate that this right should not be extended to a Sabbatarian such as Ms. Hobbie, who has demonstrated her suitability and availability for employment on all days other than Saturday.

II. An award of unemployment compensation benefits to Appellant would not violate the establishment clause of the First Amendment.

Appellees maintain that an award of benefits in this case would violate the establishment clause of the First Amendment. In support of this contention, Appellees cite a recent decision Estate of Thornton v. Caldor, _____ U.S. _____, 105 S.Ct. 2914 (1985). Appellees are mistaken both in their assertion concerning the establishment clause and in their reliance upon Caldor.

Unlike Caldor, there has been no attempt by Appellant to impose an absolute duty on the employer, Lawton Jewelers, to conform its business practices to Appellant's religious beliefs. To the contrary, the only obligation imposed upon Lawton Jewelers is one of reasonable accommodation pursuant to 42 U.S.C. §2000e(j). Because this is not an

action pursuant to 42 U.S.C. §2000e et seq., the question of the employer's duty of reasonable accommodation is not at issue. Instead, this is an action for unemployment compensation benefits and is not controlled by Caldor.

This Court has long recognized that government in some circumstances may accommodate one's exercise of religion by creating exemptions or exceptions for religious observers without violating the establishment clause. E.g., Wisconsin v. Yoder, supra; Braunfeld v. Brown, 366 U.S. 599 (1961). Persons who, for reasons of religious training and belief, are conscientiously opposed to war in any form have long been exempt from combat, 50 U.S.C. §456(j); and religious employers are exempt from certain claims of employment discrimination under Title VII (42 U.S.C. §2000e-1) and Title IX [20 U.S.C. §1681(a)(3)]. In fact, the Court

in both Sherbert and Thomas v. Review Board expressly addressed the contention that an award of benefits to a claimant such as Ms. Hobbie would constitute an unconstitutional establishment of religion:

> The respondents contend that to compel benefit payments to Thomas involves the State in fostering a religious faith. There is, in a sense, a "benefit" to Thomas deriving from his religious beliefs, but this manifests no more than the tension between the two Religious Clauses which the Court resolved in Sherbert:
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> "In holding as we do, plainly we are not fostering the 'establishment' of the Seventh-day Adventist religion in South Carolina, for the extension of unemployment benefits to Sabbatarians in common with Sunday worshippers reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall." Sherbert v. Verner, 374 U.S. at 409, 83 S.Ct., at 1796.

Thomas v. Review Board, supra, at 719, 720.

CONCLUSION

Amici urge the Court to maintain its firm commitment to religious liberty by awarding unemployment compensation benefits to this Seventh-day Adventist who was discharged for refusing to work on the Sabbath. Such an award is in keeping with the Court's previous decisions interpreting the First Amendment and with the Universal Declaration of Human Rights. A denial of benefits will restrict religious liberty by discouraging religious conversions among those who are already employed when a conversion would create the potential for conflict with one's existing terms of employment.

For the above-mentioned reasons, amici respectfully ask that the decision

of the Unemployment Appeals Commission of the State of Florida be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Donald R. Brewer, hereby certify that on June 4, 1986 I mailed first class postage paid three copies of the foregoing Brief Amici Curiae to each of the following Attorneys of Record in this case:

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